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7 IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

8 STATE OF MONTANA,

9 Plaintiff,

10 vs.

11 RICHARD SCHAEFFER,

12 Defendant.

)
) Cause No. DC-11-015(B)
)
)

) JUDGMENT AND SENTENCE
)
)

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15 On February 7, 2012, the Defendant, accompanied by counsel,
16 Sean Hinchey, was convicted by jury verdict to COUNT I: THEFT BY
17 INSURANCE FRAUD, a Felony.

18 A hearing in aggravation and mitigation of sentence was
19 then held on June 28, 2012, where the Defendant was accompanied
20 by counsel, Sean Hinchey.

21 In fashioning the following sentence, the Court is guided
22 by the sentencing policy of the State of Montana which requires
23 the Court to consider the several factors pursuant to § 46-18-
24 101, et. al. MCA, including the following: the degree of harm
25 and the punishment that is commensurate with the offenses;

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1 provide for accountability for the Defendant's actions; provide
2 the Defendant an opportunity for rehabilitation and
3 reintegration into society; and consider reparation and
4 restoration of the community and victims.

5 In consideration of the nature of his offense, testimony
6 presented to the court, his prior criminal history, his ability
7 to maintain employment and make payments toward his court-
8 ordered financial obligations, the recommendations of the
9 parties and the Pre-Sentence Investigation prepared by Cindy
10 Ault of the Adult Probation and Parole office,

11
12 **IT WAS THE JUDGMENT OF THIS COURT** that imposition of
13 sentence upon the Defendant is deferred for a term of six (6)
14 years.

15 That period of deferral is, however, subject to the
16 following conditions:

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18 As conditions of parole and probation, the Defendant must
19 comply with the following:

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21 1. The Defendant shall be placed under the supervision of the
22 Department of Corrections, subject to all rules and
regulations of the Adult Probation & Parole Bureau.

23 2. The Defendant must obtain prior written approval from
24 his/her supervising officer before taking up residence in
25 any location. The Defendant shall not change his/her place
of residence without first obtaining written permission
from his/her supervising officer or the officer's

1 designee. The Defendant must make the residence open and
2 available to an officer for a home visit or for a search
3 upon reasonable suspicion. The Defendant will not own
4 dangerous or vicious animals and will not use any device
5 that would hinder an officer from visiting or searching
6 the residence.

7
8 3. The Defendant must obtain permission from his/her
9 supervising officer or the officer's designee before
10 leaving his/her assigned district.

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12 4. The Defendant must seek and maintain employment or
13 maintain a program approved by the Board of Pardons and
14 Parole or the supervising officer. Unless otherwise
15 directed by his/her supervising officer, the Defendant
16 must inform his/her employer and any other person or
17 entity, as determined by the supervising officer, of
18 his/her status on probation, parole, or other community
19 supervision.

20 5. Unless otherwise directed, the Defendant must submit
21 written monthly reports to his/her supervising officer on
22 forms provided by the probation and parole bureau. The
23 Defendant must personally contact his/her supervising
24 officer or designee when directed by the officer.

25 6. The Defendant is prohibited from using, owning,
26 possessing, transferring, or controlling any firearm,
27 ammunition (including black powder), weapon, or chemical
28 agent such as oleoresin capsicum or pepper spray.

29 7. The Defendant must obtain permission from his/her
30 supervising officer before engaging in a business,
31 purchasing real property, purchasing an automobile, or
32 incurring a debt.

33 8. Upon reasonable suspicion that the Defendant has violated
34 the conditions of supervision, a probation and parole
35 officer may search the person, vehicle, and residence of
36 the Defendant, and the Defendant must submit to such
37 search. A probation and parole officer may authorize a
38 law enforcement agency to conduct a search, provided the

1 probation and parole officer determines reasonable
2 suspicion exists that the Defendant has violated the
3 conditions of supervision.

4 9. The Defendant must comply with all municipal, county,
5 state, and federal laws and ordinances and shall conduct
6 himself/herself as a good citizen. The Defendant is
7 required, within 72 hours, to report any arrest or contact
8 with law enforcement to his/her supervising officer or
9 designee. The Defendant must be cooperative and truthful
10 in all communications and dealings with any probation and
11 parole officer and with any law enforcement agency.

12 10. The Defendant is prohibited from using or possessing
13 alcoholic beverages and illegal drugs. The Defendant is
14 required to submit to bodily fluid testing for drugs or
15 alcohol on a random or routine basis and without
16 reasonable suspicion.

17 11. The Defendant is prohibited from gambling.

18 12. The Defendant shall pay all fines, fees, and
19 restitution ordered by the sentencing court.

20 13. The Defendant shall pay the following fees and/or
21 charges which are statutorily mandated. **Payment is to be**
22 **made to the Eleventh Judicial District, Flathead County,**
23 **Montana, Clerk of Court, 920 South Main, Suite 300,**
24 **Kalispell, MT 59901.**

25 a. Defendant shall pay a surcharge of \$15 for each
misdemeanor. [\$46-18-236(1)(a), MCA] **Defendant to pay:**
\$0

b. Defendant shall pay a surcharge of the greater of \$20 or
10% of the fine for each felony offense. [\$46-18-
236(1)(b), MCA] **Defendant to pay: \$100.00**

c. Defendant shall pay a surcharge for victim and witness
advocate programs of \$50 for each misdemeanor or felony

charge under Title 45, Crimes; §61-8-401 (DUI); or §61-8-406 (DUI). [§46-18-236(1)(c), MCA] **Defendant to pay: \$50.00**

d. Defendant shall pay a \$10.00 per count for court information technology fee. (§3-1-317, MCA) **Defendant to pay: \$10.00**

e. The Defendant shall pay fine(s) over and above any amount credited for pre-conviction incarceration as ordered and directed by the court. (§46-18-231, MCA)

Defendant to pay net fine of \$1,000.00 with \$500.00 suspended

f. The Defendant shall pay costs of legal fees and expenses defined in §25-10-201, MCA, plus costs of jury service, prosecution, and pretrial, probation, or community service supervision or \$100 per felony or \$50 per misdemeanor, whichever is greater. (§46-18-232, MCA).

Court orders Defendant to pay: \$100.00

14. The Defendant shall pay Court Ordered supervision fees. The Probation & Parole Officer shall determine the amount of supervision fees (§46-23-1031, MCA) to be paid each month in the form of money order or cashier's check to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620 (\$50 per month if the Defendant is sentenced under §45-9-202, MCA, dangerous drug felony offense and placed on ISP). The DOC shall take a portion of the Defendant's inmate account if the Defendant is incarcerated

15. There is a \$50 fee at the time a PSI report is completed, unless the court determines the Defendant is not able to pay the fee within a reasonable time (§46-18-111, MCA). The Defendant shall submit this payment to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620.

The Defendant did not pay the PSI fee.

1 **Defendant to pay \$50.00**

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3 16. The Defendant shall pay court-ordered restitution by
4 money order or cashier's check sent to the Department of
5 Corrections, Collection Unit, P.O. Box 201350, Helena, MT
6 59620. The Defendant shall be assessed a 10%
7 administration fee on all restitution ordered. All of the
8 methods for collection of restitution provided under §46-
9 18-241 through §46-18-249, MCA, shall apply, including
10 garnishment of wages and interception of tax refunds.
11 Pursuant to §46-18-244(6)(b), MCA, the Defendant shall
 sign a statement allowing any employer to garnish up to
 25% of his/her wages. The Defendant shall continue to
 make monthly restitution payments until he/she has paid
 full restitution, even after incarceration or supervision
 has ended. **Restitution in the amount of \$25,079.97 is owed**
 to: Penn Star Insurance Company, PO Box 532, Willow Grove,
 PA 19090 Attention: Larry Wastle

12 17. The Defendant shall submit to DNA testing pursuant to
13 § 44-6-103, MCA.

14 18. The Defendant shall not be given credit against the
15 fine for time served in jail prior to sentencing. (§46-
16 18-403, MCA)

17 19. The Defendant shall obtain a mental health
18 evaluation/assessment by a state-approved evaluator. The
19 Defendant shall pay for the evaluation and follow all of
 the evaluator's treatment recommendations.

20 20. The Defendant shall not possess or use any electronic
21 device or scanner programmed to listen to law enforcement
 communications.

22 21. The Defendant shall abide by a curfew as determined
23 necessary and appropriate by the Probation & Parole
24 Officer at the Probation Officer's discretion.
25

1 22. The Defendant shall provide yearly credit report at
2 the request of the Probation & Parole Officer.

3 23. The Defendant shall not knowingly associate with
4 probationers, parolees, prison inmates, or persons in the
5 custody of any law enforcement agency without prior
6 approval from the Probation & Parole Officer. The
7 Defendant shall not associate with persons as ordered by
8 the court or BOPP.

9 24. The Defendant shall not knowingly have any contact,
10 oral, written, electronic or through a third party, with
11 the victim(s) unless such contact is voluntarily initiated
12 by the victim(s) through the Department of Corrections.
13 DOC staff may notify victims about the availability of
14 opportunities for facilitated contact with their offenders
15 without being considered "third parties." **Owners and/or**
16 **Employees of the following: Allines Insurance Adjusters**
17 **(now known as Custard Insurance Adjusters), Penn Star**
18 **Insurance Company and the insured, Schweigert Roofing**

19 The Defendant is to be given credit for one (1) day served
20 in the Flathead County Detention Center pending final
21 disposition in this matter (2/10/11).

22 The Defendant is hereby advised that he has 120 days from
23 the date of filing this Judgment and Sentence to contest any
24 perceived differences between this written Judgment and the
25 Court's oral pronouncement of sentence.

Any bond posted in this matter is hereby exonerated and is
to be released to the Defendant or his posting surety.

1
2 DONE IN OPEN COURT the 28th day of June, 2012.

3 DATED this 27th day of July, 2012.

4
5 Katherine R. Curtis
6 District Court Judge

7 cc: Lori Adams, Deputy County Attorney
8 Special Deputy Flathead County Attorney, Brett O'Neill
9 Sean Hinchey, Defense Counsel
10 Richard Schaeffer, Defendant
11 Flathead County Sheriff's Office
12 Adult Probation and Parole

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